

ROBERT B. FERGUSON

IBLA 71-102

Decided February 6, 1973

Appeal from a BLM State Office decision (Wyoming 0322015) canceling appellant's noncompetitive oil and gas lease and directing refund of rentals paid on the same, on the grounds that the lands embraced by the lease were within a designated known geologic structure of a producing field prior to the filing of his offer.

Affirmed.

Oil and Gas Leases: Cancellation—Oil and Gas Leases: Known Geological Structure

A noncompetitive oil and gas lease is properly canceled as to land shown to have been within the known geologic structure of a producing field before an application to lease was filed, and the Geological Survey is not bound by a report made by it that the land is not within a known structure if it subsequently discovers that such report was not based upon information of the structure known before the application was filed.

Oil and Gas Leases: Competitive Leases—Oil and Gas Leases: Known Geological Structure—Oil and Gas Leases: Noncompetitive Leases

Where the facts on which a determination that land is within the known geologic structure of a producing oil and gas field are known prior to the date on which a noncompetitive offer to lease for oil and gas is filed, it is the date of the ascertainment of the facts and not the announcement thereof that determines whether lands are to be leased competitively or noncompetitively.

APPEARANCES: Robert B. Ferguson, pro se.

## OPINION BY MR. HENRIQUES

Appellant seeks review of a Bureau of Land Management State Office decision canceling his noncompetitive oil and gas lease, Wyoming 0322015, and refunding his advance rental on the basis of the fact that the lands within the lease were within a designated known geologic structure of a producing oil field prior to the filing of his offer.

Appellant's offer to lease was filed on December 22, 1965. The lands in question were declared to be not within the known geologic structure of a producing oil or gas field by the local office of the Geological Survey on December 28, 1965. The lease issued on January 18, 1966, effective February 1, 1966. At the same time, however, on January 17, 1966, the Acting Director of the United States Geological Survey classified the lands in question as within a known geologic structure effective December 13, 1965. This obvious inconsistency was not discovered until October of 1970, whereupon the State Office acted to cancel appellant's lease. There is no producing well on the leasehold.

Appellant contends that having once acquired a clear listing from the Geological Survey, the Survey is estopped from arguing that in reality the lands were within a known geologic structure.

This case is directly on point with Superior Oil Company, A-28897 (September 12, 1962). In that case the Geological Survey reported that the land was not within a known geologic structure, and the lease had issued. Two months later, the Geological Survey informed the State Office that its earlier statement had been erroneous and that at the time of filing the land had been within a known geologic structure. Appellant in that case argued that since the Geological Survey had clear listed the lands prior to the issuance of the lease, it could not at a later date contend that the lands were within a known geologic structure so as to nullify his lease. The Department found this argument unpersuasive. As was therein noted:

It is well established that lands within a known geologic structure of a producing oil and gas field must be leased competitively if the facts on which that determination is made are known prior to the filing of a noncompetitive oil and gas offer although the announcement of that determination is not made until later.

In response to an inquiry as to the date on which the facts which resulted in the classification of the lands as within  
a KGS

were known, the Director of the Geological Survey informed this Board:

The Patrick Draw-Desert Springs KGS was redefined by the Acting Director, Geological Survey, on January 17, 1966, effective December 13, 1965. The basis for this redefinition of the KGS was a study of the whole Patrick Draw-Desert Springs producing area. This study was completed on December 13, 1965, and lands in 10 different townships were recommended to be included in the revised KGS. The recommended effective date of the revised KGS was not based on the completion date of an individual well within the field, but is the date that the limits of the trap were ascertained by complete review of all the facts.

Thus, appellant's situation is on all fours with that presented in Superior Oil Company, supra, and is controlled by that decision.

It is, of course, unfortunate that more than five-years elapsed before this error was discovered, but the State Office is returning the entire rental paid in over that period. The greater passage of time in this case cannot be said to vitiate the need of applying the precedent of Superior Oil Company, supra, and the clear requirements of the statute that leases of lands lying within a known geologic structure be granted only under competitive bidding procedure.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques, Member

We concur.

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Joseph W. Goss, Member

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Frederick Fishman, Member

